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DILBAG SINGH

v.

STATE OF U.P. AND ORS.

MAY 8, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

U.P. Non-Technical (Class II) Services (Reservation of Vacancies for Demobilised Officers) Rules, 1980:

C

Rule 5—Benefit under—Applicability of—Officer commissioned on September 22, 1974 and released on November 30, 1979—Recruitment as Deputy Collector in 1979—Rule 5 held applicable to such an officer because rules are retrospective.

D

The respondent-State issued U.P. Non-Technical (Class II) Services (Reservation of Vacancies for Demobilised Officers) Rules, 1973 which were withdrawn with effect from August 6, 1978 but later re-issued in 1980 and were given retrospective effect with effect from 6.8.1978. These rules were applicable to Commissioned Officers recruited to the army between November 1, 1962 to January 10, 1968 and on December 3, 1971 and released at any time thereafter. The appellant who was commissioned on September 22, 1974 and released on November 30, 1979 was selected as a Deputy Collector in 1979 claimed seniority with effect from September 22, 1974 in terms of Rule 5 of the 1980 Rules but was denied the same. The petition filed by the appellant before the High Court and contested by the Government on the ground that since 1973 Rules were withdrawn with effect from August 6, 1978, the appellant was not entitled to the benefit as he was recruited in 1979, was dismissed. Hence this appeal.

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F

Allowing the appeal, this Court

G

HELD : U.P. Non-Technical (Class II) Services (Reservation of Vacancies for Demobilised Officers) Rules, 1980 have been given retrospective effect with effect from 6.8.1978. Thereby even 1973 Rules must be deemed to be in operation till 1980 Rules were framed afresh. Therefore, the appellant is entitled to the benefit of seniority in accordance with Rule 5 of the 1980 Rules. [39-D, G, F]

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5704 of A
1995.

From the Judgment and Order dated 25.04.94 of the Allahabad High Court in W.P. No. 2469 of 1989.

P.P. Rao, Pramod Dayal and Ms. K. Choudhary for the Appellant. B

D.V. Sehgal, Nalin Tripathi and R.B. Misra for the Respondents.

The following Order of the Court was delivered :

Leave granted. C

We have heard the counsel on both sides. The Government, exercising its power under the proviso to Article 309 of the Constitution, issued U.P. Non-Technical (Class II) Services (Reservation of Vacancies for Demobilised Officers) Rules, 1973. The same Rules were reissued in 1980. These Rules would be applicable to officers of Short Commissioned or Commissioned Officer recruited to the army between November 1, 1962 to January 10, 1968; and on December 3, 1971 and released at any time thereafter. Admittedly, the appellant was commissioned on September 22, 1974 and was released on November 30, 1979. Advertisement was made for recruitment of Deputy Collectors on May 2, 1979. The appellant had applied for and was selected as a Deputy Collector. He sought for seniority w.e.f. September 22, 1974 in terms of Rule 5 of 1980 Rules. Since it was not given, he filed W.P. No. 2469/89 and the High Court of Allahabad dismissed the writ petition on April 25, 1994. Thus, this appeal by special leave. D E

It is not in dispute that the Rules have been given retrospective effect and, therefore, the appellant is entitled to the benefit of seniority in accordance with Rule 5 of 1980 Rules. It was contended in the High Court that since 1973 Rules were withdrawn w.e.f. August 6, 1978, the appellant is not entitled to the benefit when he was recruited in the year 1979. That appears to be obviously a mistaken stand taken by the Government, since 1980 Rules have been given retrospective effect w.e.f. 6.8.1978. Thereby even 1973 Rules must be deemed to be in operation till 1980 Rules were framed afresh. As per the memorandum, Ann.II, which is now made part of the record, the Government have clarified that all benefits, except the reservation, were withdrawn by the notification issued w.e.f. August 6, 1978. F G H

- A** In other words, even the right of reservation was maintained during inter-regnum. Accordingly, the appellant is entitled to the seniority as per 1980 Rules.

The appeal is accordingly allowed with all consequential benefits. No costs.

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T.N.A.

Appeal allowed.